U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 98 217 52878 Office: California Service Center Date: DEC 13 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

Dec00_0192203

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established international acclaim at the top of his field.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a badminton coach. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Counsel asserts that the petitioner has won such an award, specifically "[t]he 1988 Thomas Cup Championship. This is . . . the one internationally recognized award indicating the highest level of distinction in the sport." Given that badminton is an Olympic event, it is not entirely clear that the Thomas Cup Championship is more prestigious or visible than an Olympic medal. The burden is on the petitioner to provide evidentiary support for counsel's claim. Furthermore, the Thomas Cup recognizes the petitioner's abilities as a competitor rather than as a coach. While evidence pertaining to the petitioner's skill as a player is not without weight, he intends to work as a coach rather than as a competitor in his own right, and therefore his eligibility must rest primarily on acclaim he has garnered as a coach.

Barring the alien's receipt of a major, international award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. 204.5(h)(4) allows the submission of comparable evidence when the ten criteria are not clearly applicable to the alien's field.

When we take into account this provision allowing for "comparable evidence," the petitioner's evidence is persuasive. The petitioner has not only had major success as a badminton player in his own right, holding at one point the number one ranking in the world (International Badminton Federation rankings) and competing in the 1992 Olympics, but as a coach of the Malaysian national team he has led his players to an undeniably prestigious silver medal at the 1996 Olympics. If the petitioner's accomplishments are not sufficient to establish extraordinary ability in his field, it is difficult to imagine what kind of evidence would suffice. Badminton coaching is, admittedly, a field which is not readily amenable to "celebrity" status; the top badminton coaches are not going to have the same "household name" recognition as the top actors, musicians, or basketball players.

The director, in denying the petition, has stated:

> In that the sport of badminton is a field of athletic endeavor that is international in scope and not just limited to a specific or narrow region, it must be established that the beneficiary is at the pinnacle of his field not only nationally but internationally.

This argument fails because the statute demands "national or international" acclaim. The Service has no discretion to state

that national acclaim in a given field is insufficient to establish extraordinary ability.

The director contends that the petitioner has not placed himself "among the best of the very best even in his native land," but cites no specific shortcomings in the petitioner's evidence to support that finding. The petitioner was ranked number one in his native country for three years, and in the world for two years, as a competitor, and the success of his charges demonstrates that the petitioner's abilities are not limited to playing badminton himself. The director states that the petitioner has not established the credentials of his witnesses, but these witnesses include the general manager of the Badminton Association of Malaysia and the secretary general of the Badminton Association of the People's Republic of China. These individuals are among the top badminton officials in their respective countries, and the director has failed to explain why they supposedly lack standing to attest to the petitioner's achievements in the field of badminton. On appeal, the petitioner has submitted further testimony in the same vein, such as letters from the president and vice president of USA Badminton, "the administrative body for the participation of American athletes in international badminton competition."

Certainly, the petitioner could have submitted more persuasive evidence in support of his claim, such as documentation from the International Olympic Committee, but nothing in the record discredits or casts doubt on the existing evidence.

Similarly, counsel has made some claims which are readily dismissed. For instance, one regulatory criterion deals with "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." Counsel asserts that the petitioner's work as a coach satisfies this criterion, because the petitioner "was necessarily involved in the selection of players, composition of teams for competition, and other aspects of judging the performance and potential of international players." Every athletic coach, however, "judges" the work of his or her players in this fashion; therefore, such activity does nothing to distinguish the petitioner from other coaches. Although this claim is not persuasive, it does not intrinsically undermine other credible arguments and evidence in this proceeding.

The director has noted that the current player rankings of various badminton organizations do not list the petitioner among the top competitors. The petitioner, however, does not claim that he is still an active competitor; rather, he has shifted from competing to coaching. Therefore, the absence of the petitioner's name from current rankings does not damage his claim or undermine his credibility.

The petitioner has won the praise of top badminton officials in three countries, and has coached his players to an Olympic medal, as well as to high placings in other international competitions. Making allowances for the nature of the petitioner's field, as allowed by 8 C.F.R. 204.5(h)(4), we find that the petitioner's evidence is quite sufficient to justify a finding of eligibility, and indeed it is difficult to see how much more a badminton coach would have to accomplish before reaching what the director considers to be the pinnacle of the field.

To demonstrate his intent to continue working in the field and benefit the United States, the petitioner shows that he has been offered employment with the [redacted] High School badminton team. The director acknowledges that the school is "the number 1 high school in badminton in California" but asserts that California "is still only one of fifty states in the United States." The record, however, shows that the school is ranked first not only in California, but nationwide. The president of USA Badminton confirms "a standing offer . . . to coach the men's and/or women's national team," as well as "the strong possibility of his participation as a coach for various international badminton competitions."

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established, through his proven record of achievement as a coach, that his entry into the United States will substantially benefit prospectively the United States compared to other badminton coaches. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.